

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SCOTT D. McCLURG, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 4:12CV00361 AGF
)	
MALLINCKRODT, INC., et al.,)	Lead Case for Pretrial Proceedings
)	
Defendants.)	

MEMORANDUM AND ORDER

This toxic tort action is now before the Court on the motion of Plaintiffs in the following three cases which have been consolidated with this Lead Case for pretrial proceedings, for leave to file second amended complaints:

McClurg, et al. v. MI Holdings, Inc., 4:12CV00361 AGF
Adams, et al. v. MI Holdings Inc., 4:12CV00641 AGF
Steinmann, et al. v. MI Holdings, Inc., 4:12CV01942 AGF.

The proposed amendments allege radiation exposure levels to Plaintiffs exceeding the federal radiation-dose limits, allegations Plaintiffs contend are now supported by expert reports they have obtained. Two of the five remaining Defendants have filed an objection to the motion for leave. They maintain that the proposed amendment would be futile, and that even with the new allegation, the three complaints would be subject to dismissal for failure to state a claim because they do not contain sufficient information regarding the dates or duration of exposure, the locations of exposure, the chemicals or substances involved, or the type of exposure (e.g., air, soil, or water). Thus, according to the two objecting Defendants, the proposed amendments only address the federal radiation-dose limit and ignore the other deficiencies argued by Defendants in their respective motions to

dismiss the first amended complaints in the three actions. They also argue that these Plaintiffs should not be given yet another chance to cure their deficient complaints.


Pursuant to Federal Rule of Civil Procedure 15(a)(2), courts should grant leave to amend a pleading “freely . . . when justice so requires.” The Court believes that here, Plaintiffs should be permitted to amend their complaints as proposed. Granting the motion to amend would also bring the three complaints at issue into conformity with the other complaints that have been consolidated in this action.

Accordingly,

IT IS HEREBY ORDERED that the motion of Plaintiffs in the three above-listed cases to file second amended complaints is **GRANTED**. (Doc. No. 178.)

IT IS FUTHER ORDERED that the Clerk of Court shall separate the proposed second amended complaints that are attached as exhibits to Plaintiffs’ motion and docket them as Second Amended Complaints, each in the appropriate action listed above.

IT IS FURTHER ORDERED that Defendants’ motions to dismiss the first amended complaints in the three actions listed above are **DENIED** without prejudice to Defendants refiling, by incorporation or otherwise, motions to dismiss the second amended complaints in these actions. (Doc. Nos. 156, 158, 160.)


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 29th day of May, 2014.